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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/826,672

04/16/2004

Richard F. Gladney

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7590

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EXAMINER

SANTOS, ROBERT G

ART UNIT

PAPER NUMBER

3673

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/826,672	GLADNEY, RICHARD F.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Robert G. Santos	3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2006 and on 06 April 2006.
- 2a) ☒ This action is FINAL.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>20060406</u>  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3 and 7-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Broyles '729 in view of Poole '198. As concerns claims 1-3 and 8-26, Broyles '729 lacks the use of a mattress foundation (C) having at least one sidewall outer surface (2-5) with a pattern unitarily formed thereon which is substantially planar or three-dimensional, as well as the use of at least one ground support member (f) which also includes a pattern, wherein "unitarily" includes non-attachably and wherein "unitarily formed" includes formed using at least one of molding, etching, embossing, engraving, carving, stamping, silhouetting and sculpting. Poole '198 provides the basic teaching of a frame assembly (50, 54, 56, 59) having a sidewall (54, 56, 59) which includes a pattern unitarily formed with the sidewall, wherein unitarily includes non-attachably (as described on page 2, lines 6-8) and wherein unitarily formed includes sculpting (as described in page 2, lines 7-8). The skilled artisan would have found it obvious at the time the invention was made to provide the mattress assembly of Broyles '729 with a mattress foundation comprising at least one sidewall outer surface and at least one ground support member each having a pattern unitarily formed thereon, wherein "unitarily" includes non-attachably and wherein "unitarily formed" includes formed using at least one of molding, etching, embossing,

Art Unit: 3673

engraving, carving, stamping, silhouetting and sculpting, in order to impart a finished appearance to the mattress assembly as desired.

With regards to claim 7, Broyles '729 is considered to show a condition wherein a pattern (12) is formed on at least a portion of the upper side of the top surface (1) of the mattress foundation (C) in Figure 1 and in column 2, lines 58-62.

3. Claims 1-3, 8-14 and 17-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Propst '952 in view of Poole '198. Propst '952 lacks the use of a mattress foundation (C) having at least one sidewall outer surface (7) with a pattern unitarily formed thereon which is substantially planar or three-dimensional, as well as the use of at least one ground support member (W) which also includes a pattern, wherein "unitarily" includes non-attachably and wherein "unitarily formed" includes formed using at least one of molding, etching, embossing, engraving, carving, stamping, silhouetting and sculpting. Poole '198 provides the basic teaching of a frame assembly (50, 54, 56, 59) having a sidewall (54, 56, 59) which includes a pattern unitarily formed with the sidewall, wherein unitarily includes non-attachably (as described on page 2, lines 6-8) and wherein unitarily formed includes sculpting (as described in page 2, lines 7-8). The skilled artisan would have found it obvious at the time the invention was made to provide the mattress assembly of Propst '952 with a mattress foundation comprising at least on sidewall outer surface and at least one ground support member each having a pattern unitarily formed thereon, wherein "unitarily" includes non-attachably and wherein "unitarily formed" includes formed using at least one of molding, etching, embossing, engraving, carving, stamping,

Art Unit: 3673

silhouetting and sculpting, in order to impart a finished appearance to the mattress assembly as desired.

4. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Broyles '729 in view of Poole '198, and further in view of Saputo '946. Broyles '729, as modified by Poole '198, does not specifically disclose the use of a headboard tangentially extending vertically along one end of the foundation. Saputo '946 provides the basic teaching of a plastic mattress foundation (10) provided with brackets (59, 60) for securing a headboard thereto. The skilled artisan would have found it obvious at the time the invention was made to provide the mattress foundation of Broyles '729, as modified by Poole '198, with a headboard tangentially extending vertically along one end of the foundation in order to impart a more finished appearance thereto.

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Broyles '729 in view of Poole '198 and further in view of Saputo '946 as applied to claim 4 above, and further in view of Bellows et al. '191. Broyles '729, as modified by Poole '198 and as further modified by Saputo '946, does not specifically disclose a condition wherein the headboard is constructed substantially of plastic material. Bellows et al. '191 provide the basic teaching of a plastic bed frame (10) including a headboard (16) and constructed from a plastic material (see Bellows et al. '191, column 3, lines 37-39). The skilled artisan would have found it obvious at the time the invention was made to provide the mattress foundation of Broyles '729, as modified by Poole '198 and as further modified by Saputo '946, with a headboard constructed substantially of plastic material since such a headboard is generally well known as being economical and

Art Unit: 3673

lightweight as taught by Bellows et al. '191, thereby also facilitating attachment to a mattress foundation.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Broyles '729 in view of Poole '198 and further in view of Saputo '946 and Bellows et al. '191 as applied to claim 5 above, and further in view of Wallace et al. '537. Broyles '729, as modified by Poole '198 and as further modified by Saputo '946 and Bellows et al. '191, does not specifically disclose a condition wherein an outer surface of the headboard includes a pattern. Wallace et al. '537 provide the basic teaching of a headboard (12) provided with a pattern (21) on its outer surface (18). The skilled artisan would have found it obvious at the time the invention was made to provide the mattress foundation of Broyles '729, as modified by Poole '198 and as further modified by Saputo '946 and Bellows et al. '191, with a headboard having an outer surface including a pattern in order to "enhance the attractiveness and beauty of the structure" as desired (see Wallace et al. '537, column 1, lines 3-9).

### ***Response to Amendment***

In response to Applicant's arguments on pages 7 and 8 of his amendment concerning the Broyles '729, Propst '952, and Poole '198 references, the examiner respectfully asserts that the respective mattress assemblies of Broyles '729, as modified by Poole '198, and Propst '952, also as modified by Poole '198, disclose the use of a sidewall including a pattern unitarily formed thereon since each mattress assembly functions as a single unit (having an aesthetically pleasing appearance) regardless if it were formed as a single piece or from a plurality of pieces.

Art Unit: 3673

Furthermore, the recitations recited in claims 1-13 and 21-24 with respect to the pattern construction appear to be process limitations; because MPEP 2113 states that "If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.", it is considered that the claims are still anticipated by Broyles '729 as modified by Poole '198 and by Propst '952 as modified by Poole '198, and that the process by which the pattern is made is not a patentable distinction.

### *Conclusion*

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gladney '205 and Polevoy et al. '848.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3673

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert G. Santos whose telephone number is (571) 272-7048. The examiner can normally be reached on Tues-Fr and first Mondays, 10:30 a.m. to 8:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Suzanne L. Barrett can be reached on (571) 272-7053. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Robert G. Santos  
Primary Examiner  
Art Unit 3673

R.S.  
June 9, 2006